

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

UNITED STATES OF AMERICA, Criminal No. 3:18cr00025

Plaintiff,

vs.

Charlottesville, Virginia

MICHAEL PAUL MISELIS,

2:56 p.m.

Defendant.

July 19, 2019

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE NORMAN K. MOON
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the United States:

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Court Reporter:

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U.S. Court Reporter
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Proceedings recorded by mechanical stenography; transcript
produced by computer.

1 THE COURT: Mr. Miselis, I have your presentence
2 report. You'll have a right to speak in your own behalf, but
3 first, have you and your attorney had an opportunity to
4 review the report, including any revisions that might have
5 been made?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Are there any issues in dispute in this
8 case -- other than I would rule the same way in his case with
9 regard to the enhancement.

10 MR. COX: No, Your Honor; just the enhancement.

11 THE COURT: In this case, I would rule the same way,
12 that the evidence does not prove beyond a reasonable doubt
13 that he singled out any particular victim because of the
14 particular victim's actual or perceived race, color,
15 religion, national origin, ethnicity, gender identity,
16 disability or sexual orientation. And I will, for the
17 record, just put in his, along with his sentencing, the
18 statement similar to that I made with regard to Mr. Daley. I
19 won't repeat it here.

20 Do you wish to be heard?

21 MR. CULLEN: Your Honor, without the enhancement, the
22 government's understanding is he's an total offense level 16
23 and an advisory range of 21 to 27 months. Assuming my
24 calculation is correct, the government would respectfully ask
25 for a sentence somewhere within that advisory guideline range

1 for the following reasons: First, with respect to the nature
2 and circumstances of the offense as to this defendant, he,
3 like Mr. Daley, although this defendant was not a founder or
4 a leader of this organization, was a member, beginning in
5 Huntington Beach, including Berkeley, and then infamously
6 made the trip to Charlottesville in August of 2017. Once in
7 Charlottesville, he committed particularly violent acts.
8 We've seen evidence -- photographs, videos and the like --
9 that depict him punching and kicking an African-American man
10 on the ground after Mr. Daley had started to throw that man
11 on the ground. He kicked another bystander victim on Second
12 Street, in the stomach, so hard that he broke his toe in the
13 process. Later that day, after he made his way to
14 Emancipation Park, he threw water bottles at other protesters
15 while yelling "F these Jews," and he punched a man multiple
16 times on the top of the steps near Emancipation Park while
17 holding an anti-Semitic sign. So although he wasn't a leader
18 or organizer like Mr. Daley, he was certainly an enthusiastic
19 and violent member of this organization. Again,
20 Charlottesville wasn't the only time this defendant had
21 engaged in this conduct. He did it on at least two other
22 prior occasions.

23 Your Honor, this defendant's history and
24 characteristics do not warrant a variance below the advisory
25 guideline range. In our view, they support a sentence within

1 that range. The fact that he has no prior criminal record is
2 not an adequate basis to vary downward. The guideline range
3 that I just recited takes his lack of criminal history into
4 account. Because he doesn't have a prior record, he's got a
5 lower advisory guideline range. The fact that he lost his
6 job with a defense contractor because of his affiliation with
7 a white supremacist group and committing violent acts in
8 California and Charlottesville also does not warrant a
9 variance below the advisory guideline range. All criminal
10 defendants, to some extent, face some economic hardship as a
11 result of being brought to justice as a result of their
12 criminal conduct.

13 It is certainly true this defendant comes from a
14 loving family. They gave him many advantages and he is
15 highly educated; but that is not, in the government's view, a
16 proper basis to vary below the advisory guideline range.

17 Even though he was, until somehow he got off track in
18 life, a successful, obviously brilliant student, and on his
19 way to becoming a productive member of society at a very high
20 level, it's equally true for the better part of two years, he
21 was a member of a militant white supremacist group that
22 committed pretty despicable acts of violence in
23 Charlottesville and elsewhere. He wasn't tricked. He wasn't
24 misled. He joined this organization voluntarily, and he
25 eagerly and enthusiastically participated in committing

1 violent acts.

2 I would also point out -- I made the argument with
3 respect to kind of an increasing level of dangerousness.
4 This is the history and characteristics argument. Daley,
5 after he returned home is still recruiting. This defendant,
6 like Mr. Daley, was participating in target practice with
7 assault rifles, shooting out of a moving van.

8 I would remind the Court, we put on evidence at this
9 defendant's bond hearing that at the time he was arrested on
10 or about October 1, 2018, in his residence in California, he
11 had over a thousand rounds of ammunition and a book entitled
12 How to Bomb the U.S. Government. This defendant was becoming
13 increasing more militant as time went on and, unfortunately,
14 that's who this defendant was when he was arrested, and
15 that's the defendant you have in front of you today, in spite
16 of all the good things he had done in his life, the fact that
17 he had a loving family, and the fact he was a bright and
18 successful student.

19 For the same reasons I articulated in the prior
20 sentence, a guideline sentence will provide just punishment.
21 It will afford adequate deterrence to this defendant, who has
22 demonstrated a propensity to engage in violent conduct as
23 well as others who may be motivated to do the same and it
24 will protect against unwarranted sentencing disparities among
25 co-defendants.

1 Thank you.

2 MR. COX: Your Honor, before argument, I would like
3 to call a witness if I could.

4 THE COURT: All right.

5 MR. COX: Judy Miselis.

6 ALICE JUDITH MISELIS, CALLED AS A WITNESS BY THE DEFENSE,

7 SWORN

8 DIRECT EXAMINATION

9 BY MR. COX:

10 Q. Ma'am, would you please state your name for the record?

11 A. Alice Judith Miselis.

12 Q. Where do you live?

13 A. Stockton, California.

14 Q. What is your occupation?

15 A. I am a registered nurse.

16 Q. Do you know Mr. Michael Miselis?

17 A. I gave birth to him.

18 Q. Could you describe for us his childhood?

19 A. Michael's always been a very, very quiet child. He's
20 been very studious. He's never one to ask for help. He's
21 always been trying to find -- solving the problem himself.
22 He's always been caring. He's always been loving.

23 Q. Could you tell us what sort of student he was?

24 A. He was a very good student. He graduated top of his
25 high school class, 4.6, 4.5 GPA. He was picked as a pinnacle

1 student, and was accepted into multiple universities. He
2 chose UCLA. He started off as a computer engineering student
3 and midway through, changed to aerospace engineering. Even
4 though he changed his majors, he managed to graduate in that
5 four-year time period.

6 He's always a person, child, kid, who was always
7 concerned about the financial aspects of things in that he
8 knew that he needed to not waste our money in taking time in
9 school. He's always been one -- just kind of amazed me
10 sometimes. He'd go to the thrift stores and come home with
11 the worst clothing in the world that were old men clothing,
12 and he'd cut the pants off to make shorts out of them just to
13 save money. He's been very conservative in that aspect and
14 very conservative with spending our money in that he didn't
15 need anything, didn't need any help and would manage on his
16 own.

17 Q. Could you describe his social relationships?

18 A. He's always been more studious than social. He's had
19 his core group of friends in high school -- Jimmy Sanchez,
20 Navdeep Singh, Michael No. Two. So he had a small group of
21 friends that were similar to him in that they were very quiet
22 people, very studious people.

23 At 14, I asked him what he wanted for his birthday and
24 he wouldn't tell me. I quizzed him more and he still
25 wouldn't tell me because it cost too much. So I still

1 insisted he tell me and it was to build a computer from
2 scratch.

3 Q. Who did he build that computer with?

4 A. He built it -- well, I helped because I learned a lot,
5 and then Navdeep helped the most because Navdeep -- when you
6 buy a computer, it has all the parts in it and all the
7 software. When you make a computer, there's a clear
8 motherboard where you have to install Microsoft and that sort
9 of thing and get things up and running. So he's -- yeah.
10 He's been very conservative. Cost a lot less to buy one,
11 though, than to make.

12 Q. What were his goals?

13 A. I think just to be successful. I've always known he
14 wanted to be some type of engineer from the time he was
15 little. He was always building things with Legos. He was
16 going to follow in grandpa's footsteps, that sort of thing.
17 Just to be successful.

18 Q. How did these charges affect your family?

19 A. It's the most devastating thing in the world. The only
20 worst thing that could ever happen is if some -- if he wasn't
21 here. This has been worse for my husband, myself, our
22 children, relatives. It's worse than the death of our
23 parents. It's absolutely the worst thing that's ever
24 happened. I think -- I know it's the worst thing that's ever
25 happened to him. He's done nothing but apologized to us in

1 every phone call and wrote letters apologizing for all of
2 this that has occurred. I know he can rebuild.

3 Q. I wanted to ask you about that. After he's released
4 from confinement, what sort of help are you going to provide
5 for him?

6 A. We will be there for him. We will be there to get our
7 Michael back. What he is portrayed as here is not the real
8 Michael. I know he's made mistakes. He's certainly picked
9 the wrong friends. I think because he's never been a very
10 social person where he's been with other studious people that
11 he was easily led into this group of buddies or this group of
12 friends, that would say, Let's go work out, and Let's go do
13 this kind of stuff -- because this is not his personality at
14 all. He's always been very gentle. He's been very loving.
15 He has two nieces and a nephew, his sister's children,
16 Salvador, Josephine and Ada. When Salvador was probably
17 about two-and-a-half, for some reason, he started calling him
18 Uncle Oley. Even when our dog -- we, unfortunately, had to
19 put her down because she was so sick. Michael called and I
20 put the phone up to the dog's ear and he talked to her for a
21 while and she just perked right up.

22 Q. Do you think he'll be able to recover from this?

23 A. Absolutely. We are there to support him in any way we
24 can. We're there to strengthen him, to get our Mikey back.

25 Q. Is there anything else you want to tell the judge?

1 A. Yeah, I would.

2 Your Honor, on Tuesday afternoon was the first time I've
3 seen our son in almost a year. It was through glass. I have
4 not been able to touch him, to just give him a hug. So I ask
5 please, after -- and I don't care who's there or what I have
6 to do -- can I just hug my son? I don't know when I'll be
7 able to see him again.

8 Please, if you see it within your will to have mercy on
9 him, he's really, really a very, very good person. He's
10 always been very hardworking. He's always been very loving
11 and kind. Everybody that knows him has been totally, totally
12 shocked in this whole situation. It's never been him to be
13 aggressive, to be mean. It's just out of character for him.
14 I think -- my apologies, and thank you for any consideration
15 towards him. I appreciate that.

16 MR. COX: Thank you.

17 THE WITNESS: Sorry. I got too emotional.

18 MR. CULLEN: No questions.

19 MR. COX: Your Honor, this case is a lot about public
20 shame or disgrace. Mr. Miselis brought that upon himself
21 through his own actions. We're not excusing that. We're not
22 trying to minimize that. He brought it upon his family. As
23 you can see from his mother, the devastating impact this had
24 upon his family because it was shocking. It was completely
25 at odds with everything they knew about him his entire life

1 until this happened. It brought shame to his friends and
2 colleagues. As you heard, he has friends of different ethnic
3 backgrounds, and as you can imagine, as an engineer at the
4 top levels -- I mean, when we say someone is smart, we call
5 them a rocket engineer. That's what he was. And he's
6 working with people of all different ethnic backgrounds, and
7 all of that is in danger of being lost now because of this.
8 You know, again, he realizes this. He pled guilty to this.

9 Then he brought shame on this community. We've all
10 lived through this. We know what happened. We saw today
11 those things that occurred here on August 11th and 12th, and
12 he's deeply ashamed for that. But, Your Honor, he wasn't
13 born in April or March of 2017. He had 28 years before then,
14 and I submit that this is one of the most accomplished
15 defendants that has ever come before you. I mean, it's
16 incredible what he's done with his life up until he started
17 this chain of events that led us here today.

18 As his mother said, he did well in school, very well.
19 He's one of the top student in his high school. He went to
20 UCLA, majored in aerospace engineering and completed a
21 four-and-a-half engineering program in four years. Entered
22 the graduate program in aerospace engineering and got his
23 Masters degree. And then, he went on to his Ph.D. Again, he
24 had other ethnic colleagues he was working with in the
25 graduate program, including his advisers. He was leading a

1 rocket propulsion program. Honestly, when I went through his
2 resume, I needed a dictionary to read through it. All the
3 things he's done in his life are at such a high level. At
4 the time that he was pursuing his Ph.D., he also was employed
5 at Northrop Grumman, one of our top defense contractors, and
6 he was actually doing national defense work. He was a
7 modeling simulation analyst, and he was involved with making
8 computer simulations of air to air and air to ground combat.
9 These things are crucial to our national security. He had to
10 have a Top Secret clearance, and anybody that has ever had
11 one of those knows they don't just pass those out like candy.
12 He had to go through a rigorous, detailed character
13 investigation, which he passed and for which he was granted
14 the clearance. So up until March of 2017, he had a blameless
15 life and one that if any of our children was able to achieve
16 what he achieved, we'd be very proud.

17 Now, everything about his history bespeaks to mercy.
18 But what happened here, the circumstances? We saw, again, in
19 excruciating detail what happened in Berkeley, in
20 Charlottesville. Now, I'll say this, and this was brought
21 out today. He didn't even know the co-defendants until March
22 of 2017 at Huntington Beach. That's where he met them. He
23 had an interest in politics. And actually before then, he
24 had never really been involved with politics at all. But he
25 met up with these guys in Huntington Beach and he fell in

1 with them. He had never had friends like this before. If
2 you've ever been around engineers, they're of a certain type.
3 I realize it's a stereotype, but it's kind of justified.
4 They are people who are very studious and maybe kind of
5 boring. Those are the kind of friends he always had. Then
6 he met these guys and they were so different from all the
7 other friends he had. He had never really been part of this
8 really cool group of guys. They all had their little code
9 names. He was Chuck. We had, like -- what -- Rick Flair and
10 Ben Torrance. Again, I'm not saying that they were just like
11 a club and they were just out to do things, you know, that
12 some goofy club might do. They were doing things that are
13 very, you know -- very serious offenses. But it's important
14 to realize, you know, that he was just a follower. He wasn't
15 one of the leaders. He wasn't one of the co-founders of this
16 organization.

17 Again, we're not trying to say he didn't commit
18 violence that day in Charlottesville. He did. But the
19 government pointed out or tried to make the argument that
20 since Charlottesville, he continued to be a danger to society
21 because they found some ammunition when they did a search of
22 his apartment. There was no -- nothing illegal about that.
23 It was completely legal for him to have ammunition, and the
24 same with this videotape of them, you know, engaging in
25 target practice and shooting from a car. Again, it's not

1 something he should have been doing, but there was nothing
2 illegal about it.

3 I would like to point out that the two instances
4 where he was involved in violence at Berkeley and in
5 Charlottesville, there were no weapons used at all. In fact,
6 they had no weapons with them. We all saw the videotape of
7 people heavily armed -- more armed than the police.

8 Mr. Miselis was not armed. He actually didn't even have a
9 baseball bat or anything at all that could be considered a
10 weapon. In fact, he wasn't even wearing the baseball helmet,
11 which he kept in his backpack. So the fact that he also
12 happened to own guns and happened to own ammunition has no
13 relationship to the instant offense.

14 After Charlottesville, he has not been accused of any
15 other violent acts. That got his attention, and he certainly
16 did not either escalate what he had done in Charlottesville
17 or continue to be a danger.

18 Now, as far as the need for the sentence, the message
19 to send out to society -- and I'll try to be very brief here.
20 Let's look at deterrence here. Mr. Miselis has lost far more
21 than any other co-defendant in this case --

22 THE COURT: Well, that is one of the least impressive
23 things to me. He had the greatest opportunity. We get it
24 all the time -- these poor people, drug addicts; we ought to
25 whip up on them. They didn't start out with anything. Most

1 of them, you could have predicted where they were going to be
2 when they were two years old. But the fact -- bank
3 presidents who embezzle, come in and say, People don't trust
4 me anymore and I can't get a job as a bank president. Well,
5 that's good you're not getting a job.

6 MR. COX: Your Honor, I wasn't trying to elicit
7 sympathy.

8 THE COURT: I'm just saying it's not fair to the poor
9 and ignorant to treat them -- beat up on them and say, Oh,
10 you're brilliant and you could have been great if you hadn't
11 done this, and treat you good because of what you could have
12 done.

13 MR. COX: I understand, Your Honor. I was just
14 trying to make an argument about deterrence to the public as
15 a whole. I wasn't arguing for extra sympathy because of what
16 he lost. I was just trying to make the point that the public
17 looking at this case, whether or not it's fair or unfair for
18 them to have extra sympathy for people that had high
19 attainments, I think they would see that as something that he
20 did lose and would be factored into their opinion as to
21 whether or not, you know, extra criminal -- I'm sorry --
22 extra prison sentence would be needed to show the public that
23 this was a serious offense. I'm just trying to point out
24 that there was a great downfall in this case because of his
25 own actions but that extra time is not needed to make the

1 point to the public that, you know, he committed a serious
2 offense and should be punished for it. I think that is
3 important.

4 Also, as far as deterrence is concerned, his criminal
5 category, you know, he has not committed any offenses
6 whatsoever, and statistics show he has a very, very low
7 chance of recidivism in this case. So, you know, just
8 looking at statistics, there's very little chance that he's
9 going to go out there and commit another offense.

10 I'll just briefly mention he's not in need of any
11 sort of you know, educational or vocational training or drug
12 or alcohol treatment so there's no necessity to consider that
13 when considering his sentence.

14 Finally, Your Honor, I'd like to address the
15 unwarranted sentence disparities issue. My co-counsel in
16 another case spoke about Cole White, and it's unknown at this
17 time what his ultimate sentence would be, but, again, the
18 government did agree to bond after seven months. We'd submit
19 that Cole White is a far more violent individual than
20 Mr. Miselis. His specialty was head-butting. There's no
21 doubt that he committed many violent acts. You know, so when
22 you compare these two -- and also, you know, again, with
23 Mr. Miselis's criminal offense category, we believe that's
24 something that the Court should consider.

25 Also, the fact that my client pled guilty, he did

1 spare the government money. He also pled guilty as soon as
2 we had received all the discovery. So, you know, we think
3 that that's something that should be considered.

4 Mr. Miselis did commit this offense. It's something
5 that he's caused shame to himself and to his family for, but
6 he does deserve a second chance. He's worth more than the
7 offense that he committed. You know, he has had great things
8 given to him and he did have great opportunity. But he
9 should be allowed to contribute to society, to be allowed to
10 return --

11 THE COURT: He's not facing a life sentence.

12 MR. COX: Your Honor, I just wanted to point out as
13 far as completing his Ph.D. program, that those credits do
14 become stale after a while. It's not known at this time
15 whether or not he's going to be able to return to that.
16 Again, he had this great opportunity and his own acts
17 interfered with that. But I just wanted to point out the
18 sooner that he can return to that program, the more likely it
19 will be that he'll be allowed to both enter and complete the
20 program. We just think the time is an issue there with being
21 able to complete that program and, again, to contribute to
22 society.

23 For all those reasons, we believe that 12 months and
24 a day would be sufficient or the minimum necessary to meet
25 all the goals of sentencing in this case. If the Court finds

1 that that is not sufficient, we would also ask for that
2 sentence combined with home confinement.

3 Thank you, Your Honor.

4 THE COURT: Anything else?

5 MR. CULLEN: No, Your Honor.

6 THE COURT: Here again, the Court has to consider the
7 factors in 3553(a), and the history and characteristics of
8 the defendant, and of course, here, we have a real mixed
9 history here. Someone who's doing, apparently, everything
10 right, took a wrong turn. The Court has to consider the
11 seriousness of the offense, which I deem it to be a very
12 serious offense.

13 In this case, I can't get away from the fact how much
14 he seemed to be the most violent of these people in these
15 films. It seemed to me, what I saw, he was into it up to his
16 elbows, just flailing away. So, I think the sentence I'm
17 going to impose will take that into account and promote
18 respect for the law and prevent recidivism by him for as long
19 as he's incarcerated, and should serve as deterrence to other
20 persons similar to him who might be inclined to do the same
21 as he.

22 Would you stand, Mr. Miselis?

23 Is there anything you would like to say before the
24 Court pronounces sentence?

25 THE DEFENDANT: Yes, Your Honor.

1 I have absolutely made mistakes and I accept
2 responsibility for them. I learned from this experience. I
3 don't intend to let these mistakes define my life. I'm very
4 sorry and I understand I've let a lot of people down. I've
5 worked hard in the past and I'm eager to begin working
6 towards the future, and I intend to be a productive member of
7 society again.

8 THE COURT: Having consulted the advisory sentencing
9 guidelines and the factors noted in 18 U.S.C. 3553(a), it is
10 the judgment of the Court that the defendant is committed to
11 the custody of the Bureau of Prisons to be imprisoned for a
12 total term of 27 months. The sentence is within the advisory
13 guideline range that is less than 24 months, and the specific
14 sentence is imposed after consideration of the factors set
15 forth in 18 U.S.C. 3553(a).

16 Upon releases from imprisonment, defendant shall be
17 on supervised release for a term of two years. You must
18 comply with the following mandatory conditions of
19 supervision: Not commit another federal, state or local
20 crime; not unlawfully possess a controlled substance; refrain
21 from any unlawful use of a controlled substance.

22 You must submit to one drug test within 15 days of
23 release from imprisonment and at least two periodic drug
24 tests, as determined by the court.

25 You must cooperate in the collection of DNA, as

1 directed by the probation officer.

2 You must comply with the standard conditions of
3 supervision adopted by this Court as well as the following
4 special conditions: Pay any special assessment, fine and/or
5 restitution imposed by the judgment; provide the probation
6 officer with access to any requested financial information;
7 not incur new credit charges or open additional lines of
8 credit without the approval of the probation officer; reside
9 in a residence free of firearms, ammunition, destructive
10 devices or dangerous weapons.

11 You must participate in a program of testing and
12 treatment for substance abuse, as approved by the probation
13 officer, until such time as you have satisfied all
14 requirements of the program.

15 You must submit to warrantless search and seizure of
16 person and property, as directed by the probation officer, to
17 determine whether you're in possession of firearms and
18 illegal controlled substances.

19 You must submit to warrantless search and seizure of
20 person and property, as directed by the probation officer or
21 other law enforcement officer, whenever such officer has
22 reasonable suspicion that you are engaged in criminal acts.

23 It is ordered that you pay the United States a
24 special assessment of \$100, due and payable immediately.

25 Pursuant to the plea agreement in this case, Count 2

1 is hereby dismissed as it pertains to you.

2 Other than the constitutionality of the statute of
3 conviction, you have waived your right to appeal your
4 sentencing and that waiver is binding unless the sentence
5 exceeds the statutory maximum or is based on a
6 constitutionally impermissible factor. If you undertake to
7 appeal despite your waiver, you may lose the benefits of your
8 plea agreement.

9 If a right of appeal does exist, a person unable to
10 pay the cost of an appeal may apply for leave to appeal
11 without prepayment of such costs.

12 Any notice of appeal must be filed within 14 days of
13 entry of judgment or within 14 days of a notice of appeal by
14 the government.

15 If requested, the clerk will prepare and file a
16 notice of appeal on behalf of the defendant.

17 Anything else?

18 MR. COX: Yes, Your Honor.

19 Again, I would -- for the record, we wanted to get
20 our objection in for the constitutionality of 18 U.S.C. 21.

21 THE COURT: Noted.

22 MR. COX: Also, Your Honor, we'd ask that the Court
23 recommend he be confined at the Dublin facility, which is
24 close to his home in Stockton, California.

25 THE COURT: All right, sir.

1 Anything else?

2 MR. CULLEN: I believe this defendant, like
3 Mr. Daley, had filed a motion for bond. The government would
4 oppose that for the reasons at the prior hearing.

5 MR. COX: Yes, Your Honor; that's right.

6 THE COURT: I do not find it's clear and convincing
7 that he does not pose a danger and will deny the motion.

8 We'll take a few minutes until you bring up the next
9 one.

10 (Proceedings concluded at 3:31 p.m.)

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INDEXWITNESS FOR DEFENSEDirect

Alice Judith Miselis

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"I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/Sonia FerrisAugust 13, 2019"